

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3244

IN THE MATTER OF:

Served October 28, 1988

Application of CREST LIMOUSINE)
CORP. for a Certificate of Public)
Convenience and Necessity to)
Conduct Charter Operations)

Case No. AP-88-18

By application filed May 12, 1988, Crest Limousine Corp. (Crest or applicant), seeks a certificate of public convenience and necessity to transport passengers, together with baggage in the same vehicles as passengers, in charter operations, over irregular routes, between points in the Metropolitan District. */

A public hearing was held on July 14, 1988, pursuant to Order No. 3171, served May 20, 1988. Applicant presented two company witnesses and three public witnesses. Phoenix Tours, Inc., protested the application and presented evidence at hearing.

SUMMARY OF EVIDENCE

Ms. Rida von Luelsdorff is the president and owner of Crest Limousine Corp., a District of Columbia corporation. The staff of Crest currently consists of herself and her son Philip von Luelsdorff. If the authority sought in this application were granted, Ms. von Luelsdorff would be responsible for a variety of administrative duties including general oversight of operations, vehicle maintenance, schedules, and reservations. Applicant plans to hire three full-time drivers and three reserve drivers. Operations would be conducted in three vehicles seating 29, 25, and 15 passengers respectively. The vehicles would be leased. Applicant would operate seven days a week between 7 a.m. and 8 p.m.

Applicant's proposed tariff lists a rate of \$37 an hour for the 29-passenger vehicle, \$35 an hour for the 25-passenger vehicle, and \$32 an hour for the 15-passenger vehicle. A four-hour minimum plus a 15 percent "gratuity" applies to each rate. An airport transfer rate of \$140 plus 15 percent "gratuity" is also proposed. All airport transfers would be conducted in the 25-passenger vehicle. Applicant would reserve the right to charge a 50 percent cancellation fee.

*/ To the extent that this application could be interpreted to include transportation solely within the Commonwealth of Virginia, the application was dismissed pursuant to the Compact, Title II, Article XII, Section 1(b) by Order No. 3171.

Crest submitted a revised statement of financial condition showing current assets of \$40,706.83, and fixed assets of \$1,500. Long-term liabilities are listed at \$42,535.68 with a deficit to retained earnings of \$328.85. In an amended operating statement, applicant projects \$300,000 in WMATC operating income for the first 12 months of operations with total expenses for the same period projected at \$243,665.68. The witness is familiar with the Compact and the Commission's rules, and regulations.

Mr. Philip von Luelsdorff has been associated with Crest since 1986. His duties would include overseeing buses, drivers' schedules, daily operations, and emergencies. He would also interview driver applicants. Mr. von Luelsdorff seeks drivers who have a clean driving record, are over 24 years of age, and have a commercial driver's license. The drivers undergo 10 hours of training and are supervised for a period of 30 days. Applicant's vehicles would undergo a preliminary maintenance check that would include a visual inspection of the vehicle, and a check of the oil, transmission fluid, and windshield fluid. Major maintenance would be handled by a professional mechanic. The mechanic would change the oil every 3,000 miles at which time he would generally check the vehicles. Applicant submitted repair invoices reflecting maintenance performed on the vehicles after April 11, 1988, and a copy of a certificate of insurance issued to Crest Limousine Services, Inc., (sic), and effective from 12:01 a.m. on June 6, 1988, to 12:01 a.m. on July 6, 1988. The vehicles used in the proposed operations would be traded in for new models every year to year and one-half. The trade-in allowance is a part of the leasing agreement. The leasing agreement was not offered into evidence.

Crest Limousine Corp. and Ms. Rida von Luelsdorff were preliminarily enjoined from engaging in for-hire transportation within the Metropolitan District by the United States District Court for the District of Columbia, effective May 4, 1988. The Commission sought enforcement of the Compact through the Courts because Crest had performed unauthorized operations in the Washington Metropolitan Area Transit District despite a Commission order directing Crest to cease and desist from engaging in such activities.

Both Rida and Philip von Luelsdorff testified that Crest's illegal operations had ceased after the issuance of the preliminary injunction. The witnesses testified that the vehicles used in operations before the injunction were subleased to Babel Travel Service, Inc. (Babel), which holds WMATC Certificate No. 103. These witnesses also stated that they refer transportation requests to Babel. In addition to making referrals, Mr. von Luelsdorff is responsible for billing clients who have used Babel's service. After service is rendered, Mr. von Luelsdorff issues a bill on a Crest letterhead with a notation on the bottom that reads "make checks payable to BTS." Upon receipt of such designated funds, Mr. von Luelsdorff testified that he forwards the checks to Babel. No bills or invoices were offered into evidence.

Ms. Mary Louise Conley testified in support of the application. The witness stated she was not at liberty to provide the name of her employer; however, she testified that her employer provides "professional programs" for people visiting the United States from abroad. Ms. Conley is employed as a program assistant. Her duties include making transportation arrangements. The witness estimates that she makes ground transportation arrangements twice a month for groups that range in size from four to 14. Most of her clients need transportation for sightseeing purposes in Washington, DC, and to and from Mount Vernon, VA. Her clients also require transportation to and from Washington National and Washington Dulles International Airports. Ms. Conley has used applicant's services in the past. The witness testified that she called Crest to obtain for-hire transportation the week before the July 14 hearing and was able to secure transportation for an upcoming airport transfer. Due to the client's change of plans, however, the request for transportation was cancelled. Ms. Conley further testified that she secured and paid for Crest's service for an airport transfer within two months prior to the date of the hearing. The witness stated that she was totally unaware of Crest's lack of authority to perform the services requested.

Mr. William Babb testified in support of the application on behalf of Washington Group Tours, a company he owns and operates. Mr. Babb's company offers prepackaged group tours which include sightseeing attractions within the Metropolitan District. He has used Crest's service for three years. The witness estimates that he needs service within the Metropolitan District five to six times a month for groups of 20 to 25 persons. Mr. Babb became aware of a change in the service offered by Crest when he noticed a sign, posted in a vehicle used to transport his clients, which indicated that the vehicle was leased to Babel. Mr. Babb asked about the sign and was told, in effect, that Crest would be leasing its authority through Babel. Mr. Babb was not aware that a preliminary injunction had been issued against applicant. The witness testified that one of his groups was currently participating in a tour arranged through Crest. He also stated that several additional trips had been performed through Crest within the last few days. In his most recent telephone contact with Crest, Mr. Babb recalled making arrangements with an individual named "Glen" for multi-day service beginning July 1, 1988. The witness receives bills on Crest letterhead, with the rates charged varying from \$32 to \$37 an hour depending on whether service was performed in a 15-, 24-, or 27-passenger vehicle. The witness has not had any contact with Babel. Other than being told that "they were using Babel to write their paper," the witness has noticed no change in applicant's operations, equipment, or drivers since May 4, 1988, the effective date of the injunction. The witness has used the services of WMATC carriers to meet his transportation needs in the past.

Mr. Goga Khalatbari is president of the International Scholars Society and the Coalition of New Americans. The witness has never used Crest's service. He appeared solely as a character witness for Ms. Rida von Luelsdorff, praising her generally as an asset to the Washington community.

Mr. Stephen Forman testified in opposition to the application on behalf of Phoenix Tours, Inc. (Phoenix or protestant). Phoenix holds WMATC Certificate No. 110 which authorizes transportation of passengers in charter operations, round-trip sightseeing, and incidental transfers, restricted to service in 22-passenger vehicles or smaller. It presently operates one 21-passenger bus and one 22-passenger bus. If the application is granted, applicant would be authorized to engage in operations similar to protestant's. Phoenix, which is not operating to capacity, stands ready and able to perform the service proposed by applicant.

DISCUSSION AND CONCLUSIONS

In determining whether to grant a certificate of public convenience and necessity, we look to the standards enunciated at Title II, Article XII, Section 4(b) of the Compact which provides that

. . . the Commission shall issue a certificate . . . if it finds, after hearing held upon reasonable notice, that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity; otherwise such application shall be denied.
(Emphasis supplied.)

Based on a review of the entire record in this case, we find that applicant has failed to sustain the burden of proof imposed by the Compact.

Willingness and ability to comply with the rules and regulations of this Commission is an essential criterion examined by the Commission in determining whether a certificate of public convenience and necessity should issue. It is a matter to be given particular scrutiny in the instant application due to Crest's history of noncompliance with the Compact and Commission rules, regulations, and orders. In assessing a carrier's fitness, a history of noncompliance creates a rebuttable presumption that the carrier is unfit as to compliance.

The United States District Court for the District of Columbia preliminary enjoined Crest Limousine Corp. and Rida von Luelsdorff from engaging in for-hire transportation of passengers within the Metropolitan District pending further order of the Court. The injunction became effective on May 4, 1988, and is still in effect. The sworn testimony of both Rida von Luelsdorff and Philip von Luelsdorff is replete with statements that Crest no longer engages in unlawful transportation. To support their claim of ceased operations, Crest testified that all vehicles formerly used by Crest to transport passengers have been subleased to Babel. Taking official notice of its

files, the Commission notes that to date no approved leases between Babel Travel Service, Inc., as lessee, and Crest Limousine Service Corp. or its principal(s) or affiliate(s) as lessor, are on file. Commission Regulation No. 69 provides that no carrier subject to the Commission's jurisdiction may charter, rent, borrow, lease, or otherwise operate in revenue service any motor vehicle to which such carrier does not hold title unless the contract of lease has been approved by the Commission. It also provides that, upon approval of a lease, the Executive Director shall serve copies of such approval upon the lessor and the lessee. Commission Regulation No. 69 provides that, coincidentally with the filing of a contract of lease, appropriate evidence of insurance for the vehicles must be filed by the lessee. Taking official notice of our files again, the Commission notes that Babel's insurance applies to specified vehicles, none of which are those claimed by Crest. The lease of a vehicle with a driver provided by a non-WMATC lessor is also prohibited.

If Crest's principals had been under the mistaken belief that Babel had in fact filed such leases with the Commission, their suspicions should have been aroused when they failed to receive an approved copy of the lease from the Commission as is required by Commission Regulation No. 69. The Commission also takes official notice of the fact that no evidence of insurance has been filed that covers the vehicles operated by Crest. Even if appropriate evidence of a leasing arrangement (with insurance) had been on file with the Commission, the testimony of one of the witnesses indicates that drivers who are employees of Crest have been performing the service allegedly provided by Babel; such a lease of vehicles operated by the lessor's employees is prohibited. Without the appropriate leases and insurance on file and in light of the testimony regarding Crest's drivers, it can only be concluded that applicant has continued to operate illegally within the Metropolitan District after being preliminarily enjoined against such action. This conclusion is supported by the testimony of the very witnesses that applicant produced to support its application.

Ms. Conley testified that she was not aware of a leasing arrangement between Crest and Babel, nor was she aware that Crest was enjoined from performing the operations it rendered. Ms. Conley booked Crest one week prior to the hearing. Ms. Conley paid for service rendered by Crest no more than two months prior to the hearing, i.e., after the effective date of the Court's injunction.

The testimony of Mr. William Babb also supports the conclusion that applicant has continued to engage in illegal operations. Mr. Babb testified that services secured through Crest were in the process of being performed on the very day of the hearing. Mr. Babb learned of the alleged leasing arrangements between Crest and Babel after inquiring about a lease sign posted in one of the vehicles used to render service. He was unaware that the Court had issued an injunction against Crest. Mr. Babb testified that other than the leasing sign, Crest's operations have remained unchanged from operations performed prior to issuance of the preliminary injunction: same drivers, same

equipment, same billing form, same method of reserving a vehicle. Mr. Babb quoted the rates that Crest charged him for service after the injunction. Those rates are identical to the rates proposed in this application and are not the rates that Babel is authorized to charge. Taking official notice of WMATC Tariff No. 2 for carrier No. 103, we note that Babel is authorized to charge \$38 per hour with a four-hour minimum for its charter operations, not the \$32 to \$37 rate quoted by the witness and billed by Crest. Mr. Babb testified that he made reservations for transportation with a representative of Crest named "Glen." This testimony contradicts the statements of the operational witness that only Ms. Rida von Luelsdorff and Mr. Philip von Luelsdorff remained associated with the staff of Crest. With no subleases on file, no evidence of insurance coverage on file for the vehicles "leased" by Crest, evidence of prohibited use of lessor's drivers, and evidence of passenger transportation for hire between points in the Metropolitan District, we are forced to conclude that applicant is in continuing violation of the Compact; Commission rules, regulations, and orders; and in violation of the Court's injunction. For these reasons, we find that Crest Limousine Corp. is unfit as to compliance.

Assuming that the Commission had found applicant to be fit, Crest nevertheless failed to meet its burden of proving that the public convenience and necessity require the proposed service.

In determining whether an applicant has met its burden of proving that the public convenience and necessity require the proposed transportation, the Commission relies on the test enunciated in Pan-American Bus Line Operations (1 MCC 190, 203 [1936]). The Pan-American test consists of three parts:

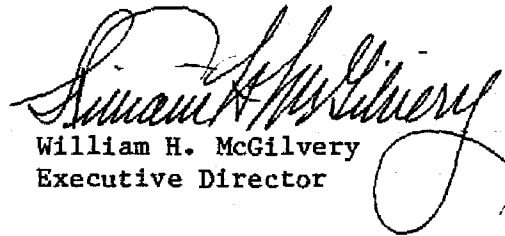
- (1) whether the new operation or service will serve a useful public purpose responsive to a public demand or need;
- (2) whether this purpose can and will be served as well by existing lines or carriers; and
- (3) whether it can be served by applicant with the new operations or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

Applicant produced three public witnesses. One witness requires no transportation of any kind. We are unable to consider as evidence the testimony of a second witness who elected not to identify the entity for which testimony is proffered and who has no personal transportation needs that could be satisfied by a grant of the application at issue in this case. Testimony relating to an unidentified source can be of no use to the Commission because no meaningful cross-examination or even evaluation of that testimony can be accomplished. Although a third witness testified to a need for transportation, Washington Group Tours' testimony alone would be insufficient to support a grant of authority. The representative of Washington Group Tours testified that he has used the service of

WMATC-authorized carriers in the past. Protestant Phoenix's testimony at the hearing indicates the availability of a carrier which is not operating at capacity and which is authorized to perform the service that the witness requires.

THEREFORE, IT IS ORDERED that the application of Crest Limousine Corp. for a certificate of public convenience and necessity is hereby denied in its entirety.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:



William H. McGilvery
Executive Director